IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.9574 OF 1995

P. Natarajan .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary,
Transport Department,
Fort St. George, Madras-9.

2. The Managing Director,
Thiruvallur Transport
Corporation, Pallavan Salai,
Madras 600 002. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Fenn Walter

For Respondents : Ms.S. Girija

:J U D G M E N T

The petitioner had entered service under the State of Tamil Nadu as a Driver in Tamil Nadu State Transport Department. Subsequently the Transport Department got merged with Pallavan Transport Corporation and a separate wing called Pallavan Transport Corporation (Express Services) was formed in 1975. Consequently all the employees of the erstwhile Tamil Nadu State Transport Department were required to exercise their option to remain as employee under Pallavan Transport Corporation Limited (Express) or any other Transport Corporation or apt for retrenchment compensation. The petitioner claiming that he was sent on deputation to Pallavan Transport Corporation (Express), did not express option to join the said Corporation as a full-fledged employee and wanted to continue in the Government service and accordingly informed the respondents. At that stage, the second respondent by letter dated 11.1.1978 informed the petitioner that in the absence of any option, he would be deemed to be the employee of Pallavan Transport Corporation (Express Services). The petitioner sent a reply stating that he was prepared to work under the Pallavan Transport Corporation provided he was

given the facilities which were available to him in the erstwhile Tamil Nadu State Transport Department or otherwise he may be sent to any other Government Department. By a letter dated 28.1.1980, the petitioner had requested the second respondent to communicate the amount payable to him as retrenchment compensation and other dues and also informed that they did not have right to retrench him from services. However, by letter dated 8.2.1980, the second respondent retrenched the petitioner from service. It is claimed that the petitioner was retrenched from service without complying with the provisions contained in Sections 25-F, 25-G and 25-N of the Industrial Disputes Act.
After receipt of the aforesaid order, the petitioner had approached the Conciliation Officer, but the efforts for conciliation failed. Thereafter the petitioner filed a suit in O.S.No.9078 of 20 01 for a declaration that the memo dated 8.2.1980 issued by the second respondent was unjust, improper, illegal and void and deemed to continue in service with all benefits.
However, the said suit was dismissed by judgment dated 3.12.1983 and thereafter Civil Appeal No.189 of 1990 filed by the petitioner was dismissed by the City Civil Court by judgment dated 31.8.1990.
At that stage, the petitioner raised I.D.No.246 of 1991 on the ground that the order of termination is in violation of Sections 25F, 25 N and 25G of the Industrial Disputes Act. The Presiding Officer, Labour Court by award dated 20.1.1994, dismissed the said Industrial Dispute. The Labour Court inter alia came to the conclusion :

 . . . The petitioner then replied by his letter dated 28.1.80 stating that he was prepared to work in the Express wing of Pallavan Transport Corporation with the terms and conditions as applicable to him at the time of his entry into Government Service and that he has not interested to work in the Corporation under the existing terms and conditions and that he would be happy to receive his salary from the Corporation along with his retrenchment compensation amount. From the above reply the petitioner clearly indicated that he is willing to be retrenched with retrenchment compensation.

The labour court also came to the conclusion that the petitioner has suppressed about the filing of the civil suit and dismissal by the trial court as well as the appellate court.

2. In the present writ petition, it is contended that since retrenchment compensation had not been paid, the order of retrenchment was illegal and void. It has been further contended that without obtaining the prior permission, retrenchment could not have been effected in view of Section 25-N of the Act.

3. In the counter affidavit filed on behalf of the respondents, the contentions raised by the petitioner have been specifically denied.
It has been stated :
 . . . It is, however, denied that the petitioner was not paid compensation at the time of his being retrenched from service and no prior permission was obtained from the Government for retrenching the petitioner from service. It is submitted that based on the Government direction, the

petitioner was retrenched for not exercising his option within the stipulated time.

It has been further stated :

 . . . It is no doubt true that the petitioner was retrenched and the provisions of the Industrial Disputes Act were adhered to and it is denied that the retrenchment compensation has not been paid till date.
It is also submitted that it is the petitioner who has sought for retrenchment and it is not correct to state that he has not opted for the same.

4. From the narration of the events and the conclusions reached by the Labour Court, it is apparent that the petitioner himself had opted not to continue under the Corporation. He was all along claiming that he should be treated as a Government servant or should be given the same benefits as it was available to him. He had also stated that in case it is not possible to give him the benefits available under the Government, he would be happy to receive the pay and retrenchment compensation. It is thus apparent that the petitioner never wanted to continue as employee under the Corporation. His claim that he should be treated as employee under the Government had been negatived by the Civil Court. At that stage, the petitioner had not challenged the judgment passed by the appellate court. Thereafter he has raised the Industrial Dispute. He had the option of availing remedy in the Civil Court or to raise Industrial Dispute. In the civil court it was his plea that he should not be terminated from the services by the Corporation as he is under deputation from the Government and he continued to be a Government servant.

5. Even subsequently his claim of reinstatement before the Labour Court on the ground of violation of Section 25-F cannot be accepted. Strictly speaking the order severing the relationship of employer and employee was based on the own letter written by the petitioner. It can be said that the petitioner himself had voluntarily opted out of service under the respondent No.2. The only thing he wanted at that stage is payment of dues and retrenchment co mpensation.

6. The assertion of the petitioner that retrenchment compensation has not been paid has been denied. From the materials on record, it is difficult to come to a conclusion that the amount has not been paid.

7. Accordingly, the writ petition is dismissed. No costs.

Index : Yes
Internet : Yes
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To

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